



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

FEB - 7 2012

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5954 5805**

Ms. Jane Casler  
Casler Farm  
691 Babcock Hill Road  
West Winfield, New York 13491

Re: In the Matter of: Casler Farm  
**Administrative Order CWA-02-2012-3023**

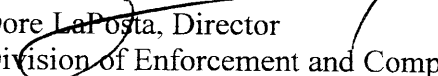
Dear Ms. Casler:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that the above-named facility, Casler Farm ("Respondent"), is in violation of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1311 for National Pollutant Discharge Elimination System ("NPDES") violations as described in the findings to this Administrative Order ("AO" or "Order"). The enclosed Order provides a revised schedule for compliance deadlines originally in the ordered provisions of Administrative Order CWA-02-2011-3039 issued June 24, 2011. Enclosed are two (2) originals of this Order, issued pursuant to Sections 309 and 308 of the Act, which detail the findings.

Please acknowledge receipt of this Order on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the facility to civil and/or criminal penalties pursuant to Section 309 of the Act. Compliance with the terms of this Order shall not preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. §1319.

Should you have any questions concerning this matter, please feel free to contact Kimberly McEathron of the Water Compliance Branch at (212) 637-4228.

Sincerely,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosure

cc: Joseph DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC  
Steven Botsford, Regional Water Engineer, NYSDEC Region 6

bcc: Douglas McKenna, DECA-WCB (pdf)  
Justine Modigliani, DECA-WCB (pdf)  
Christy Arvizu, DECA-WCD (pdf)  
Kimberly McEathron, DECA-WCB w/enclosure

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with Revised Schedule\Casler Farm AO with revised schedule draft 1\_18\_12.docx

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Casler Farm  
691 Babcock Hill Road  
West Winfield, NY 13491

Proceeding pursuant to Sections 308(a) and  
309(a) of the Clean Water Act, 33 U.S.C.  
§§1318(a) and 1319(a)(3)

**RESPONDENT**

**ADMINISTRATIVE  
COMPLIANCE ORDER**

CWA-02-2012-3023

The following Findings of Violation are made, and Order for Compliance ("Order") issued, pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§1318(a) and 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2, and since further redelegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.

**A. Legal Authority**

1. Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA 33 U.S.C. §1342.
2. Section 402 of the CWA, 33 U.S.C. §1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.
3. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
4. The Administrator of EPA has promulgated regulation 40 C.F.R. §122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations. The regulations at 40 C.F.R. §122.23 establish

requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.

5. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. §1362 to include, *inter alia*, biological materials and agricultural waste discharged to water.
6. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. §1362 to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation ... from which pollutants are or may be discharged."
7. "Waters of the United States" are defined in 40 C.F.R. §122.2 to include intrastate rivers and streams, and tributaries thereto.
8. An "animal feeding operation" or "AFO" is defined by 40 C.F.R. §122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
9. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. §122.23(b)(2) as an AFO that is, *inter alia*, a medium CAFO.
10. A "medium CAFO" is defined by 40 C.F.R. §122.23(b)(6)(i) as an animal feeding operation that stables or confines within the range of 200-699 mature dairy cows, whether milked or dry.
11. "Process wastewater" is defined by 40 C.F.R. §122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.
12. The terms "CAFO General Permit" or "Permit" mean the NYSDEC SPDES General Permit for Concentrated Animal Feeding Operations issued by NYSDEC, pursuant to Section 402 of the CWA. NYSDEC issued SPDES General Permit for Concentrated Animal Feeding Operations (GP-04-02) on June 24, 2004. The permit became effective on July 1, 2004 and expired on June 30, 2009 and has been administratively extended. The current permit (GP-04-02) supersedes the previous SPDES permit (GP-99-01) which was issued on June 18, 1999 with an effective date of July 1, 1999 and an expiration date of June 30, 2004.

## **B. Factual Background**

1. Jane Casler, doing business as Casler Farm ("Respondent"), owns and operates an animal feeding operation located at 691 Babcock Hill Road, West Winfield, New York ("Facility").
2. Respondent applied for coverage under the NYSDEC SPDES General Permit for Concentrated Animal Feeding Operations, GP-99-01 ("CAFO General Permit" or "Permit") on December 29, 1999. Permit coverage was effective starting on January 13, 2000. When the CAFO General

Permit was reissued on June 24, 2004 with an effective date of July 1, 2004, the Facility's permit coverage was automatically renewed.

3. The Facility confines and feeds or maintains dairy cows for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. §1362(14).
4. EPA conducted a Compliance Evaluation Inspection ("CEI") of the Facility on May 11, 2011.
5. At the time of the May 11, 2011 CEI, the Facility was confining approximately 270 mature dairy cows and 60 heifers on-site. Therefore, the Facility is currently a medium CAFO as that term is defined in 40 C.F.R. §122.23(b)(6)(i)(A).
6. EPA issued Order CWA-02-2011-3039 on June 24, 2011 to the Respondent for violations identified during the CEI conducted on May 11, 2011. All items in the ordered provisions were required to be completed by May 31, 2012.
7. EPA received submissions from the Respondent on July 11, 2011, August 2, 2011, August 30, 2011 and January 3, 2012 in response to Order CWA-02-2011-3039 to address the following items listed in the ordered provisions of Order CWA-02-2011-3039:
  - a. Implement the remaining Comprehensive Nutrient Management Plan ("CNMP") barnyard runoff practices such as a roof over the walkway to the Milking Parlor;
  - b. Immediately retain copies of all records and reports required by the permit for a period of at least 5 years from the date reported; and
  - c. Immediately organize CNMP and all records and reports required by this permit in such a way that can be more effectively evaluated with permit requirements.
8. In Respondent's August 30, 2011 submittal, Respondent requested a time extension for implementing the silage leachate control system (CWA-02-2011-3039 ordered provision item 1) citing funding limitations and timing with the grant application process.

### **C. Findings of Violation**

During the CEI on May 11, 2011, EPA observed violations of the Respondent's SPDES permit (NYA000317) as documented in the CEI report and Order CWA-02-2011-3039. An ongoing violation that has not been addressed by the Respondent is detailed below:

1. Section VII.C.iv of the CAFO General Permit requires medium CAFOs to develop a CNMP that includes, and fully implements, responses to high risk conditions, no later than October 1, 2008. At the time of the inspection, EPA inspectors observed that silage leachate practices, in response to high risk conditions, such as low flow collection and a filter strip have not been fully implemented. Therefore, Respondent failed to fully implement CNMP responses to high risk conditions, in violation of Section VII.C.iv of the CAFO General Permit.



2. On the basis of the Finding cited above, the Respondent is in violation of Sections 301 and 308 of the CWA, 33 U.S.C. §§1311 and 1318 and applicable implementing regulations.

#### **D. Ordered Provisions**

Based on the Findings of Violation set forth above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the following actions:

1. Respondent shall design and construct a silage leachate control system, including the low flow collection system and high flow collection system in accordance with applicable Natural Resource Conservation Service ("NRCS") standards such as NRCS Standards 312 & 635. Respondent shall implement the silage leachate control system in accordance with the following schedule:
  - a. By April 30, 2012, Respondent shall complete a silage leachate control system design in accordance with NRCS standards. Within seven (7) calendar days of completion, Respondent shall provide a copy of the design to EPA;
  - b. If Respondent elects to design and implement a silage leachate control system that includes a Vegetated Treatment Area, Respondent shall complete construction of the silage leachate control system (with the exception of seeding) in accordance with NRCS standards by September 30, 2012. Within seven (7) calendar days of completion, Respondent shall provide a Notification of Completion to EPA;
  - c. By June 30, 2013, Respondent shall initiate full operation of the silage leachate control system (including seeding) in accordance with NRCS standards. Within seven (7) calendar days of implementation, Respondent shall provide a Notification of Completion to EPA.
  - d. If Respondent elects to design and implement a silage leachate control system that does not require construction and installation of a Vegetated Treatment Area, Respondent shall initiate full operation of the silage leachate control system in accordance with NRCS standards by September 30, 2012. Within seven (7) calendar days of implementation, Respondent shall provide a Notification of Completion to EPA.
2. Respondent shall submit quarterly progress reports to EPA with updates on the construction of the silage leachate control system. Reports will be due on a quarterly basis commencing March 31, 2012 until the silage leachate control system is in full operation (i.e. reports will be due on March 31, 2012, June 30, 2012, September 30, 2012, December 31, 2012, March 31, 2013 and June 30, 2013).

#### **E. General Provisions**

1. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.

2. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating an administrative or judicial enforcement action to recover, penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. §1319.
3. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect Respondent's facility, and/or request additional information from Respondent, pursuant to Section 308 of the CWA, 33 U.S.C. §1318.
4. The EPA may subsequently amend this Order in accordance with the CWA. For example, the EPA may amend this Order to address any non-compliance with the CWA, including but not limited to any non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment will remain in full force and effect.
5. If any provision or authority of this Order or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
6. All submissions to the EPA required by this Order shall be sent to:

Douglas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007

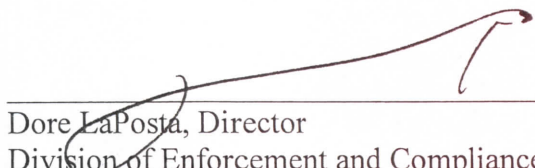
7. Any written report sent to EPA in accordance with this Order will include the following statement:

I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

8. Pursuant to 40 C.F.R. §§2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. §2.203(b) allows the EPA to release the submitted information to the public without further notice. The EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the Clean Water Act appear in 40 C.F.R. §2.302.

9. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to a civil action in federal district court, pursuant to Section 309(b) of the Act, 33 U.S.C. §1319(b), for (1) civil penalties up to \$37,500 per day for each violation, and/or (2) other injunctive relief.
10. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

FEBRUARY 7 2012  
Date

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

Casler Farm  
691 Babcock Hill Road  
West Winfield, NY 13491

Respondent

Proceeding pursuant to §309(a) of the Clean Water  
Act, 33 U.S.C. §1319(a)

**ADMINISTRATIVE**  
**COMPLIANCE ORDER**

**CWA-02-2012-3023**

**ACKNOWLEDGMENT OF RECEIPT OF  
ADMINISTRATIVE COMPLIANCE ORDER**

I, \_\_\_\_\_, an officer of Casler Farm with the title of,  
\_\_\_\_\_, do hereby acknowledge the receipt of copy of the  
ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-2012-3023.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_

